

Congress of the United States

Washington, DC 20515

December 4, 2019

Mr. Chris Oliver
Assistant Administrator
NOAA Fisheries
National Oceanic and Atmospheric Administration
1401 Constitution Avenue NW, Room 5128
Washington, DC 20230

Mr. Michael Pentony
Regional Administrator
Greater Atlantic Regional Fisheries Office
National Marine Fisheries Service
55 Great Republic Drive
Gloucester, MA 01930

Dear Mr. Oliver and Mr. Pentony:

As NOAA Fisheries prepares to release draft regulations on the American lobster fishery to protect the North Atlantic right whale — regulations that are poised to have an enormous impact on Maine lobstermen — we are writing to request an update from the agency as to how the results of the completed peer review process of the “Right Whale Decision Support Tool” will be used to inform its decision-making. While we are encouraged to see a peer review of the risk reduction target, we are interested in learning more as to how NOAA Fisheries plans to incorporate the panel’s findings into the rulemaking. We also write to convey our continued frustration with the degree to which the agency downplays the role of Canadian fisheries and ship strikes in right whale serious injury and mortality.

Earlier this year, we sent a letter to NOAA Fisheries expressing our concerns with the “Decision Support Tool,” which NOAA is using to determine the risk various fishing gear configurations pose to right whales. In our correspondence, we highlighted that this tool had not been peer reviewed and that it relies on data based on averages of whale locations from 1990 to 2016, rather than relying on more recent datasets that better reflect the present-day distributional shift of these whales. We are encouraged that NOAA Fisheries has convened the peer review and expects a report by the end of 2019. However, with the end of the year fast approaching and draft regulations for the lobster fishery anticipated in early 2020, we would like to be assured that NOAA Fisheries plans to resolve the tool’s deficiencies and incorporate the results of the peer review into those forthcoming regulations.

In our prior correspondence, we have also emphasized that NOAA Fisheries has not adequately accounted for the outsized role of Canada in right whale deaths when formulating the TRT risk reduction target. This is particularly worrisome as twenty-one of the thirty confirmed stranded

right whales since July 2017 have been found in Canadian waters.¹ We know that right whales continue to migrate through areas that overlap with Canadian lobster and snow crab fisheries that are not subject to comparable whale protection measures in American waters. While the United States lobster fishery — including Maine’s — has been engaged in conservation efforts to protect the right whale for decades, Department of Fisheries and Oceans (DFO) Canada has failed to engage in comparable protection efforts. In fact, just this year, DFO Canada rolled back several of its right whale protections by drastically reducing the seasonal snow crab closure area and removing a vessel speed restriction zone.² These actions may very well have contributed to at least nine confirmed deaths in Canadian waters in 2019. As NOAA itself has emphasized, the right whale population cannot sustain even a single death in a year. So long as Canada remains ineffectively-regulated, the whale population will not be able to recover, regardless of any conservation measures implemented in U.S. fisheries.

Continuing to downplay the role of Canadian fisheries in future right whale management plans ignores the reality that the species is not bound by national borders. Lobster fishery management efforts cannot be successful unless the impacts from Canadian fisheries and shipping on right whale injury and mortality are adequately accounted for. We continue to be dismayed by NOAA Fisheries’ assumption that the United States and Canada pose equal risk to the North Atlantic right whale, despite the clear outsized role of Canada in right whale deaths in recent years.

The misperception that Maine’s lobster fishery is the primary cause of North Atlantic right whale injury and mortality is based on assumptions and limited datasets and will fail to accomplish our shared goal of saving this species. Documented lobster gear entanglements have declined by 90 percent since the adoption of major modifications to the Take Reduction Plan in 2009, yet NOAA’s targeted risk reduction goal ignores this record and its regulatory focus does not include documented harm to the species from other fisheries.

In an October 30, 2019, letter to the Maine congressional delegation, Secretary Wilbur Ross said that NOAA Fisheries’ analyses will “incorporate, as appropriate, information that provides further resolution to addressing complex issues, including uncertainty related to proportion of serious injuries or mortalities assigned to U.S. or Canadian fisheries gear.”³ Information shared with the congressional delegation by participants at the Atlantic Large Whale Take Reduction Team (ALWTRT) indicates that NOAA Fisheries intends to continue to assign responsibility for serious injuries and mortalities primarily to the Northeast lobster fishery — a result that is unsupported by the agency’s own data on known sources of harm to right whales. If this assignment of responsibility remains the case, we would consider it to be inconsistent with the Secretary’s commitment in his letter.

We are also discouraged that NOAA Fisheries’ new webpage “Right Whales and Entanglement” — and in particular the section on “Right Whales and the Lobster Fishery” — contains

¹ NOAA Fisheries, *2017-2019 North Atlantic Right Whale Unusual Mortality Event*, <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2019-north-atlantic-right-whale-unusual-mortality-event>.

² Fisheries and Oceans Canada, *Backgrounder: Protecting North Atlantic Right Whales*, <https://www.canada.ca/en/fisheries-oceans/news/2019/02/backgrounder-protecting-north-atlantic-right-whales.html>.

³ Secretary Wilbur Ross, letter to Maine Congressional Delegation, October 30, 2019.


misinformation that perpetuates the unsubstantiated narrative that the Maine lobster fishery is the primary cause of right whale serious injury and mortality, despite clear evidence to the contrary.⁴ Notably, the page cites the *North Atlantic Right Whales - Evaluating Their Recovery Challenges in 2018* technical memorandum as one of the primary resources used by NOAA Fisheries in making lobster fisheries management decisions. This is especially troubling given that the Maine Department of Marine Resources and other fishery stakeholders have made repeated requests for the agency to correct factual inaccuracies in the memorandum. It is unfortunate that NOAA Fisheries continues to disproportionately implicate Maine's lobster industry, particularly at a juncture where the agency is developing new regulations that will apply to the fishery.


Given the significant and potentially life-threatening modifications that Maine lobstermen are being pressed to implement in order to meet a 60 percent risk reduction target set by the ALWTRT, NOAA Fisheries must ensure that accurate data and the best available scientific evidence alone serve as the basis for determining the level of risk posed by Maine's lobster fishery and *all other* fisheries interacting with the species. It is our hope that the agency will continue to work to improve the quality of the information as well as the manner in which it is interpreted that is used to guide decisions aimed at protecting right whales and not proceed with regulations that are based on uncertain estimations, particularly given the number of lives and livelihoods that are at stake. NOAA Fisheries must demonstrate a commitment to basing its management of the American lobster fishery on the best scientific data.


We appreciate NOAA Fisheries continued cooperation with our state fisheries officials and the agency's willingness to gather feedback directly from the industry. We look forward to hearing from you and the peer review panel's comments on these important matters.

Sincerely,


Jared Golden
Member of Congress


Susan M. Collins
United States Senator


Angus S. King, Jr.
United States Senator


Chellie Pingree
Member of Congress

⁴ NOAA Fisheries, "Right Whales and Entanglements: More on How NOAA Makes Decisions," <https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-mammal-protection/right-whales-and-entanglements-more-how-noaa>.